



# Criminal Defense Attorneys of Michigan

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The Honorable Marilyn J. Kelly  
Michigan Supreme Court  
Post Office Box 30052  
Lansing, Michigan 48909

re: *ADM File No. 2009-11*

Dear Chief Justice Kelly:

On behalf of the Criminal Defense Attorneys of Michigan, I am writing to express CDAM's opposition to the proposed amendment to MCR 6.302(C)(1) contained in ADM File No. 2009-11.

The amendment, if adopted, would require "all" plea negotiations between a prosecutor and defense counsel to be "in open court and placed on the record." A prosecutor and defense attorney no longer could meet outside of court to review and discuss evidence as it related to plea options, or conduct a telephone conversation about sentencing guidelines as they might relate to plea options, or even have an informal chat in passing about how a case might be settled. Such a constraint on what are and always have been routine, regular, and, dare we say, laudable out-of-court efforts toward case resolutions will unreasonably inhibit such resolutions or considerably delay them (because they will require a formal court hearing), or, most likely, both.

The rule also would apply to "all" such discussions engaged in or conducted by the trial court pursuant to People v Cobbs, 443 Mich 276 (1993). Again, in our view such a rule unreasonably constrains such discussions. A judge may have concerns regarding the evidence, the defendant's background, or a guidelines issue that cannot effectively be addressed in open court and on the record.

It is no secret that the great majority of cases are resolved short of trial, through negotiation. This benefits society as well as the functioning of the criminal justice system by securing outcomes that, in large part, are certain, swift, and efficient, relative to trial outcomes. The proposed amendment will greatly hinder case negotiations which, in turn, will result in many fewer cases being settled, many more trials, and greatly increased caseload backlogs. None of this will further the interests of justice.

For the reasons discussed above, CDAM urges this Court to reject the proposed amendment to MCR 6.302(C)(1). Thank you for the opportunity to comment on it.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Shea', with a long horizontal line extending to the right.

John A. Shea, Co-Chair  
Rules and Laws Committee  
Criminal Defense Attorneys of Michigan

cc: Corbin R Davis, Clerk, Michigan Supreme Court